

## CENTRAL INFORMATION COMMISSION

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F.No.CIC/AT/A/2008/01083

Dated, the 25<sup>th</sup> May, 2009.

Appellant : Shri Bhoj Raj Sahu

Respondents : Securities and Exchange Board of India (SEBI)

This matter was heard earlier on 07.01.2009, 21.01.2009, 18.03.2009 and the final hearing was held on 08.04.2009. At the final hearing, respondents were present through Ms.Harini Balaji, DGM and Shri J.Shandilya, AGM. Appellant was absent when called. The third-party (i.e. the Bombay Stock Exchange) was represented by its Counsel.

2. At the end of the hearing, the Counsel for third-party was requested to file his written-arguments, which has been received on 28.04.2009.

3. According to the second-appeal filed by the appellant, Shri Bhoj Raj Sahu, his complaint about the quality of information supplied to him by the respondents is limited to 2 queries in his RTI-application dated 26.03.2008, viz. queries at Sl.Nos.6 and 10. These are discussed below:-

*Query at Sl.No.6: "Provide the list of shareholders in all the delisted companies or number of shareholders, whichever is available."*

Appellate Authority, in his order dated 26.03.2008, responded as follows *"the list of shareholders in all delisted companies is not available with SEBI or exchanges. On the other hand, it may be available with the said companies. After delisting, these companies would not come under the purview of SEBI and hence, the same cannot be obtained from them."*

Appellant, in his second-appeal submissions, has pointed out that in actual fact the companies had been delisted only by Bombay Stock Exchange (BSE), and no such delisting was effected by other stock exchanges. He has pointed out that such companies which were delisted by BSE continued to be listed by the respective regional stock exchanges. It is his argument that all the stock exchanges are within

the jurisdiction of SEBI, which possesses the regulatory authority to access the information which is held by the Stock Exchanges. Appellant has annexed with his second-appeal a list of the companies known to have been delisted by BSE but continued to be listed at other Stock Exchanges.

**Decision:**

The decision of the Appellate Authority in this matter is unclear. It is seen from the submissions made by the appellant in subsequent queries at Sl.Nos.7 and 8 that a Delisting Committee of BSE undertook the exercise of delisting of companies. From this, it follows that a list of such delisted companies would have been available with the BSE. The inference of Appellate Authority that the information regarding delisted companies was available only with the companies which were outside the purview of SEBI, therefore, doesn't seem to be factually sound.

*It is, therefore, considered necessary to remit this part of the query to the Appellate Authority for de-novo consideration regarding whether this information can either be provided by SEBI or provided after obtaining it from the BSE where it is available. Time - 3 weeks.*

**Queries at Sl.Nos.7, 8 & 10:**

- "7. Who are the members of Delisting Committee and who decides the line of action?*
- 8. Provide me the copy of the minutes of the delisting committee.*
- 10. Give all legal pending if any, against these Delisted companies."*

According to the appellant, SEBI provided a reply to the above queries to the appellant on 14.08.2008 after obtaining a reply from the BSE. In its reply, BSE declined to furnish the information to the appellant on the ground that BSE was not a public authority within the meaning of RTI Act and the matter regarding its role under RTI Act was sub-judice. It was also the contention of BSE that the information sought by the appellant did not fall within the authority of SEBI as market regulator.

Appellant's counter to this line of reasoning of the third-party, BSE is that SEBI's delisting guidelines 2003 enjoined Stock Exchanges to act in a transparent manner. This was proof enough that SEBI had regulatory control over delisting activities performed by Stock Exchanges.

Appellant has further argued that whether BSE is a public authority or not, is not relevant for the purposes of determining whether SEBI had the authority to access the information as held by BSE within the meaning of Section 2(f) of the RTI Act. It is his submission that BSE was obliged to provide the information to SEBI in view of the fact that the AA, SEBI had authorized CPIO, SEBI to access this information under the law from any Stock Exchange including BSE.

During the hearing, the third-party's (BSE) Counsel submitted that whether BSE was a public authority or not was currently sub-judice before the Bombay High Court, which had stayed the CIC's order dated 07.06.2007 designating Stock Exchanges as public authorities under the RTI Act. As long as the stay was operative on that CIC order, BSE was not obliged to furnish any information under the RTI Act to an applicant. It was the Counsel's argument that what BSE was not required to do directly, it could not be forced to do indirectly through invoking Section 2(f) of the RTI Act.

He further argued that BSE could unhesitatingly furnish the requested information to SEBI in the latter's capacity as market regulator but if such information was being sought by SEBI specifically and expressly for being furnished to the appellant pursuant to an RTI-application, BSE could take the position that it would not part with the requested information.

In the matter of SEBI's authority to access an information held by a private body to provide it to an RTI-applicant under Section 2(f) of the Act, the third-party's submission was "*that the information that the central public information officer of SEBI is required to grant to any applicant under the RTI Act, subject to the other provisions of that Act, can only be such information as is available with SEBI at the time of the application. ....the RTI Act does not require any Public Authority to procure the information sought by the applicant and then make it available to the applicant. Further, if a regulatory authority were to obtain information from those that it regulates and make such information available to an applicant, it would effectively extend the provisions of the RTI Act to even those who are not Public Authorities.*"

*Besides, if an applicant were to obtain indirectly, information which it cannot seek from us directly, by seeking the same from SEBI, it would defeat and emasculate BSE's stance that it is not a Public Authority and would render nugatory the stay granted by the Hon'ble Bombay High Court in Writ Petition 1433 of 2007."*

It has been submitted on behalf of the third-party, the BSE, that apart from the inapplicability of Section 2(f) in the present matter, the information as requested by the appellant, for the sake of argument, attracted Section 8(1)(e) of the RTI Act. It is the third-party's contention that the requested information was held by BSE on behalf of the members of the stock exchange in a fiduciary capacity and could not be allowed to be accessed by an RTI-applicant.

Another legal point third-party's Counsel brought up was that if an information is not held by a public authority as requested by an RTI-applicant, the only other alternative that was available to such public authority was to transfer the applicant's RTI-petition to the "concerned authority" under Section 6(1) of the RTI Act. No right was conferred by the Act on such public authority to direct a private body holding the information to provide it to the RTI-applicant.

On the interpretation of Section 2(f), the third-party's Counsel's submission was that the wordings of this section indicated that the public authority was authorized under this section to provide to an applicant the information held by or under the control of such public authority when the information is known to have been provided to the public authority by a private body.

It has also been submitted on behalf of the third-party that the requested information attracted Section 8(1)(d) of the RTI Act as it was in the nature of commercial confidence and trade secret of the BSE.

#### **Decision:**

Apart from the other submissions made by the third-party, the key point for decision was whether SEBI, in its capacity as the market regulator, has the power, in law, to demand from the BSE the information the like of which this appellant has requested. In a written Affidavit filed by SEBI dated 31.03.2009, as market regulator, it has been stated that it has the power to demand from BSE this variety of information.

As a matter of fact, even BSE has no objection to providing the requested information to SEBI on demand. What it objects to is the SEBI accessing this information held by BSE for the sole purpose of transmitting it to an RTI-applicant such as this petitioner.

It follows from the above that SEBI has the power within the meaning of the SEBI Act to access this information held by BSE (the third-party). The dispute, therefore, is limited to whether SEBI could access that information for the sole purpose of providing it to an RTI-applicant under Section 2(f) of the RTI Act.

The contention of the BSE sounds somewhat odd. Once they have conceded the point that the requested information could be accessed by SEBI within SEBI laws, it was not open to BSE to demand that SEBI should make use of that information depending upon what BSE considered appropriate and provide the information to another person or party only after obtaining BSE's approval. The power of SEBI as market regulator to access a certain information in the hands of BSE could not be circumscribed by BSE's own interest. In other words, BSE could not dictate to SEBI as to how SEBI should use a certain information which BSE was obliged to provide to the SEBI under SEBI Act.

In the above sense, once SEBI's right to access certain information under a given law is acknowledged, its usage could not be dictated by the holder-of-the-information (i.e. BSE). BSE could not dictate to SEBI as to how certain information transmitted by the former to the latter should be used or that it could be used for any purposes other than transmitting it to an RTI-applicant. That would be an entirely unacceptable interpretation.

The second point for determination is whether Section 2(f) of the RTI Act gives to the public authority the power to access information held by a private third-party under a given law. Section 2(f) of RTI Act (its relevant portion) reads as follows:-

".....and information relating to any private body which can be accessed by a public authority under any law for the time being in force."

According to the third-party, a proper interpretation of this provision would be that the public authority has the power under this Section to access an information held by or under the control of that

public authority — in this case is Sebi — and it could not be construed as “creating any obligation on SEBI to collect and provide information to applicant/Appellant under the RTI Act.”

This interpretation is way off the mark. A plain reading of the provision leaves no doubt that it is about the power of a given public authority to access an information relating to any private body under any other law for the time being in force. To read into it words that would imply that the power to access information held by a private body is limited only to such information about that private body which the public authority might hold at any given point in time, is to read into the provision words which don't find place there. Neither in its text nor in its context this particular provision can be said to mean what the third-party has urged the Commission to believe. Section 2(f) is clearly an autonomous and independent provision within the RTI Act, in which an information in the hands of a private body but accessible otherwise under the law by a public authority, has been rendered accessible to an RTI-applicant. Any other interpretation will run counter to the legislative intent which has been clearly expressed through the configuration of words in this provision.

Third-party's other reasoning is that as per the scheme of the RTI Act, the only action a public authority, which does not hold an information requested by an applicant, can take is to transfer the request for information under Section 6(3) of the RTI Act to the 'concerned public authority' holding that information. In other words, if an information is held by a private body, the public authority receiving the RTI-application for such information, has no option but to reject the request.

This interpretation is also way off the mark. Contrary to what the third-party has urged, in the scheme of the RTI Act, Section 2(f) is as much a part of the Act as what has been mentioned in the preceding paragraph. The responsibility of the public authority as contained in RTI Act is two-fold in cases where such public authority is known not to 'hold' the information sought by an application, One, to transfer the request for information to another public authority under Section 6(3), when it is known that the other public authority holds the information; and two, to obtain the information from a private body if the public authority is authorized under any law to access such information in the hands of that private body. Any attempt to limit the option of the public authority to the first part and to exclude it for the second, would

be to limit the scope and the reach of the RTI Act, and shall be contrary to the legislative intent.

I, therefore, hold that both these arguments of the third-party are not in consonance with the provisions of the RTI Act.

That brings up the point earlier made by the third-party — BSE — that when the status of BSE as a public authority within the meaning of Section 2(h) of the RTI Act is under Stay of the High Court, forcing it to part with the information under Section 2(f) of the RTI Act could be a colourable exercise of power by the respondents. In the words of the third-party's Counsel what BSE was not required to do directly, it could not be forced to do indirectly.

This argument also does not bear scrutiny. The BSE is either a public authority within the meaning of Section 2(h) of the RTI Act or it is a private body within the meaning of Section 2(f) of the RTI Act. Admittedly, the first part has not been conclusively answered as it is under the Stay of the High Court. But the mere fact that this part of the query is still inconclusive should not act as an estoppel in the operation of Section 2(f) of the RTI Act, especially when both these provisions in the Act coexist and apply in specific situations. The matter under High Court Stay is whether or not BSE is a public authority within the meaning of Section 2(h) of the RTI Act. It is not before the Court nor is it covered by its Stay that the information in the hands of BSE — regardless of the determination of it being a public authority — can still be accessed by SEBI under SEBI law through Section 2(f) of the RTI Act. Even if, for the sake of argument, the Court's verdict goes in favour of BSE, yet BSE will still be obliged to provide this information under Section 2(f) to the applicant through SEBI. The High Court Stay cannot be said to be operative on Section 2(f) of the RTI Act because that is not what was the burden of the CIC decision dated 07.06.2007, to which the Stay applies.

I, therefore, do not accept the third-party's argument that BSE as a private body should not be forced to part with information under Section 2(f) of the RTI Act, because its status as public authority is before the High Court and the order of the Commission declaring BSE as a public authority is under Stay. These two are mutually exclusive.

The other question brought up by the third-party is whether disclosure of this variety of information is exempted under Sections 8(1)(e) and 8(1)(d) of RTI Act.

The plea of exemption under Sections 8(1)(e) and 8(1)(d) is insubstantial and is rejected. As was explained by SEBI's representative during the hearing, the listing and delisting functions carried out by Stock Exchange could not be classified as something that belonged to the Exchange's commercial confidence or that the information was held by the Exchange in any fiduciary relationship. It was a function which the Exchanges were authorized to carry out within SEBI's overarching regulatory control.

I am, therefore, not convinced by the argument that these exemptions applied to the disclosure of the requested information regardless of the decision regarding whether BSE was a public authority or whether SEBI was authorized to access the information within the meaning of Section 2(f) of the RTI Act. I have also factored into my decision the fact that listing and delisting operations regarding Companies and Firms is an eminently public function and there is no reason why it should be carried out behind a veil of secrecy. In that sense, it attracts Section 8(2) of the RTI Act.

*It is accordingly directed that CPIO, SEBI shall obtain the above information from the third-party — BSE — and provide it to the appellant within three weeks of the receipt of this order. If the information has already been received by SEBI, then it shall be provided to the appellant within one week of the receipt of this order.*

**General:**

Before parting with this appeal, I consider it important to mention that investor and client protection is an important function of SEBI as capital market regulator. It has been the experience of the Commission in the past that investors and other persons dealing with the Stock Exchanges approached the Commission invoking the provisions of the RTI Act because somehow it is their feeling that SEBI, as market regulator, was not providing to them the type of support and relief they were looking for. This second-appeal is itself a case in point. SEBI believes that it has the authority under SEBI's own laws to access the information requested by this appellant on his behalf from the Bombay Stock Exchange. If this is what the understanding of SEBI officials of their powers under SEBI law, then the ideal thing to do would have been for them to invoke the SEBI Act to obtain information requested by the appellant from BSE and to provide it to him. For some unknown reason, this was never done forcing the appellant to approach the Commission



under the RTI Act. Now SEBI claims that it has the power under its own Act to access the information and to provide it to the appellant under the RTI Act Section 2(f). To my mind, this is a very circuitous and complicated way of providing to the lay investors or ordinary public the protection they need from the several entities operating in the capital market. SEBI's responsibility should not be seen as limited to acting when it is forced to do so under the provisions of the RTI Act. In all fairness to ordinary investors and ordinary public, SEBI ought to be discharging this function under its own laws — RTI Act or no RTI Act. I am quite confident that if SEBI lays down clear guidelines about how it intends to promote investor protection through promotion of transparency in the functioning of entities such as stock exchanges and it forces compliance through the power which vests in it under the SEBI Act, this will go a long way in obviating, on the one hand, the tendency among ordinary public and investors to choose information-disclosure under the RTI Act as a tool of their grievance-settlement and, on the other hand, expand and deepen SEBI's own involvement as market regulator in providing protection to the most vulnerable among the entities in the market, i.e. the investors and the ordinary public. In that sense, I believe that RTI Act has presented to SEBI a unique opportunity to introspect about its own powers and functions and to take meaningful actions in a vital area of its regulatory function.

In the context of the above, by powers vested in me under Section 19(8)(a) of the RTI Act, the following directions are issued:-

- (a) Within three months of the receipt of this order, the Chairman, SEBI shall ensure that detailed instructions are issued to the stock exchanges in respect of transparency in the functioning of the stock exchanges, especially in respect of investor protection, and protection of ordinary public which come in contact with these exchanges in multiple capacities.
- (b) A grievance-settlement-mechanism shall be put in place — if not already in place — and if it is already in place to ensure that it is so compliant with the provisions of the RTI Act that a petitioner is not required to approach the RTI regime for information aimed at his grievance-settlement by using the provision of Section 2(f) of the RTI Act. Like it is in the RTI Act, SEBI's grievance-settlement-mechanism should be entirely predictable and should provide to the petitioner time-bound relief/information.

- (c) A statement about the action taken in this regard shall be presented to the Commission within one month of the action having been taken by SEBI.
- 4. Appeal is disposed of with the above directions.
- 5. Copy of this direction be sent to the parties.

( A.N. TIWARI )  
INFORMATION COMMISSIONER